

AMENDED IN ASSEMBLY JUNE 8, 2006

AMENDED IN ASSEMBLY MAY 4, 2006

AMENDED IN ASSEMBLY MARCH 15, 2006

AMENDED IN ASSEMBLY AUGUST 18, 2005

## **SENATE BILL**

**No. 202**

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### **Introduced by Senators Simitian, Figueroa, and Maldonado**

(Principal coauthors: Assembly Members Leno and Pavley)

(Coauthors: Assembly Members Benoit and Cohn)

February 10, 2005

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An act to add Section 638 to the Penal Code, relating to privacy.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 202, as amended, Simitian. Privacy: telephone calling pattern record or list.

Existing law prohibits a telephone or telegraph corporation, with certain exceptions, from making available to any other person or corporation, without first obtaining a residential subscriber's consent in writing, the subscriber's personal calling patterns, including any listing of the telephone or other access numbers called by the subscriber.

Existing law pertaining to the protection of privacy, makes it a crime, punishable by fine or imprisonment or both, with certain exceptions, to wiretap, eavesdrop, or otherwise intercept telephone or telegraph communications without authorization.

This bill would make it a crime, punishable by fine, imprisonment, or both, to purchase, sell, offer to purchase or sell, or conspire to purchase or sell, any telephone calling pattern record or list, as specified, without the written consent of the subscriber whose

information is contained in the calling pattern, record, or list. Because a violation of the bill's provisions would be a crime, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 638 is added to the Penal Code, to read:  
2     638. (a) Any person who purchases, sells, offers to purchase  
3     or sell, or conspires to purchase or sell any telephone calling  
4     pattern record or list, without the written consent of the  
5     subscriber whose information is contained in the calling pattern,  
6     record, or list, or any person who procures or obtains through  
7     fraud or deceit, or attempts to procure or obtain through fraud or  
8     deceit any telephone calling pattern, record, or list without the  
9     written consent of the subscriber shall be punished by a fine not  
10    exceeding two thousand five hundred dollars (\$2,500), or by  
11    imprisonment in a county jail not exceeding one year, or by both  
12    a fine and imprisonment. If the person has previously been  
13    convicted of a violation of this section, he or she is punishable by  
14    a fine not exceeding ten thousand dollars (\$10,000), or by  
15    imprisonment in a county jail not exceeding one year, or by  
16    imprisonment in the state prison, or by both a fine and  
17    imprisonment in a county jail or in the state prison.  
18    (b) Any personal information contained in a telephone calling  
19    pattern record or list that is obtained in violation of this section  
20    shall be inadmissible as evidence in any judicial, administrative,  
21    legislative, or other proceeding except when that information is  
22    offered as proof in an action or prosecution for a violation of this  
23    section.  
24    (c) For purposes of this section:

1 (1) “Person” includes an individual, business association,  
2 partnership, limited partnership, corporation, limited liability  
3 company, or other legal entity.

4 (2) “Telephone calling pattern record or list” means  
5 information retained by a telephone corporation that relates to the  
6 telephone number dialed by the customer, or other person using  
7 the customer’s telephone with permission, or the incoming  
8 number of a call directed to the customer, or other data related to  
9 such calls typically contained on a customer telephone bill such  
10 as the time the call started and ended, the duration of the call and  
11 any charges applied whether the call was made from or to a  
12 telephone connected to the public switched telephone network, a  
13 cordless telephone, as defined in Section 632.6, a telephony  
14 device operating over the Internet utilizing voice over Internet  
15 protocol, a satellite telephone, or commercially available  
16 interconnected mobile phone service that provides access to the  
17 public switched telephone network via a mobile communication  
18 device employing radiowave technology to transmit calls,  
19 including cellular radiotelephone, broadband Personal  
20 Communications Services, and digital Specialized Mobile Radio.

21 (3) *For purposes of this section, “purchase” and “sell” shall*  
22 *not include information provided to a collection agency or*  
23 *assignee of the debt by the telephone corporation, and used*  
24 *exclusively for the collection of the unpaid debt, provided that the*  
25 *collection agency or assignee of the debt shall be liable for any*  
26 *disclosure of the information that is in violation of this section.*

27 (d) An employer of, or entity contracting with, a person who  
28 violates subdivision (a) shall only be subject to prosecution  
29 pursuant to that section if the employer or contracting entity  
30 knowingly allowed the employee or contractor to engage in  
31 conduct that violated subdivision (a).

32 (e) This section shall not be construed to prevent a law  
33 enforcement or prosecutorial agency, or any officer, employee, or  
34 agent thereof from obtaining telephone records in connection  
35 with the performance of the official duties of the agency  
36 consistent with any other applicable state and federal law.

37 SEC. 2. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the  
2 penalty for a crime or infraction, within the meaning of Section  
3 17556 of the Government Code, or changes the definition of a  
4 crime within the meaning of Section 6 of Article XIII B of the  
5 California Constitution.

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